



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
LANSING

STANLEY "SKIP" PRUSS
DIRECTOR

**BARRIER FREE DESIGN BOARD
BUREAU OF CONSTRUCTION CODES**

Conference Room 3
2501 Woodlake Circle
Okemos, Michigan 48864

AGENDA

March 13, 2009
9:30 a.m.

- 1. Call to Order and Determination of Quorum**
- 2. Modifications to Agenda (Pages 1-2)**
- 3. Approval of Minutes – January 9, 2009 (Pages 3-6)**
- 4. Other Business**

58351 Williamston Theatre – Ingham County. Request for an extension of the exception granted by the Barrier Free Design Board.
(Pages 7-8)

5. Exception Applications

- 01) 82484, Lapeer Community Church – Lapeer (Pages 9-17)
- 02) 83062, Wyzgowski Building – Bay (Pages 18-26)

6. Remand - None

Providing for Michigan's Safety in the Built Environment

BUREAU OF CONSTRUCTION CODES
P.O. BOX 30254 • LANSING, MICHIGAN 48909
Telephone (517) 241-9328 • Fax (517) 241-9308
www.michigan.gov/dleg

DELEG is an equal opportunity employer/program.

Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.

Barrier Free Design Board Meeting Agenda

Page 2

March 13, 2009

7. Staff Report –

8. Public Comment

9. Next Meeting – May 8, 2009

10. Adjournment

“The meeting site is accessible, including handicapped parking. Individuals attending the meeting are requested to refrain from using heavily scented personal care products, in order to enhance accessibility for everyone. People with disabilities requiring additional accommodations in order to participate in the meeting should contact Margarita Torres at (517) 241-9328 at least 10 working days before the event.”



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DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH
BUREAU OF CONSTRUCTION CODES

Conference Room 3
2501 Woodlake Circle
Okemos, Michigan 48864

MINUTES

January 9, 2009

9:30 a.m.

MEMBERS PRESENT

Mr. Roger Donaldson, Chair
Mr. Richard Brunvand
Mr. Daryl Domke
Mr. Brett Holt
Ms. Karla Hudson
Mr. Donald Link
Mr. Tim McGladdery

MEMBERS ABSENT

Mr. Joseph Shelton
Mr. Marvin Petty

**MICHIGAN DEPARTMENT OF ENERGY, LABOR & ECONOMIC
GROWTH PERSONNEL ATTENDING**

Mr. Todd Cordill, Chief, Plan Review Division
Ms. Usha Menon, Plan Reviewer, Plan Review Division
Ms. Margarita Torres, BFD Secretary, Plan Review Division

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OTHERS IN ATTENDANCE

1. CALL TO ORDER AND DETERMINATION OF QUORUM

The meeting was called to order at 9:30 a.m. by Chairperson Donaldson. A quorum was determined present at that time.

2. MODIFICATIONS TO AGENDA

None

3. APPROVAL OF MINUTES

A **MOTION** was made by Board Member Holt and supported by Board Member Brunvand to approve the minutes of the November 14, 2008 meeting. **MOTION CARRIED.**

4. TABLED ITEMS

None

5. OTHER BUSINESS

None

6. EXCEPTION APPLICATIONS

- 04) 82566, Learning Experience, The - Wayne
- 05) 82697, Abbott Manor – Ingham

A **MOTION** was made by Board Member Link and supported by Board Member McGladdery to adopt the reports of the Administrative Law Judge and the recommended decisions for the cases listed above. The board acknowledged the receipt of all materials submitted by the applicants. **MOTION CARRIED.**

01) 77238, Abraham and Gaffney, PC - Clinton

A **MOTION** was made by Board Member McGladdery and supported by Board Member Domke to adopt the report of the Administrative Law Judge and the recommended decision. **MOTION CARRIED.**

02) 81275, Diamond Office Plaza - Macomb

A **MOTION** was made by Board Member McGladdery and supported by Board Member Brunvand to adopt the report of the Administrative Law Judge and the recommended decision.

THEREFORE, it is the order of the Board to grant an exception for a period of 5 years. The exception granted by this order will expire on January 09, 2014. As a condition to granting this time exception, the applicant is required to submit a Plan of Compliance to the Board within 60 days. The building must be in full compliance no later than the expiration date of this ordered relief. **MOTION CARRIED.**

7. **REMANDS**

03) 81515, Christian Freedom International – Chippewa

A **MOTION** was made by Board Member Link and supported by Board Member Brunvand to remand this exception to the presiding officer (administrative law judge per Rule 13) for further information from the applicant. **MOTION CARRIED.**

8. **STAFF REPORT**

Division Chief Todd Cordill reported on the following:

Introduced himself as the new Chief of the Plan Review Division as this is the first meeting he attends as Chief.

Staff Report - Continued

The ad hoc committee for the 2009 Building, Residential and Rehabilitation Codes is being formed. Chairperson Roger Donaldson was voted by the Board as the representative for accessibility concerns on the November 14th, 2008 meeting.

The Code Officials Council of Michigan recommended Mr. Timothy McGladdery, Barrier Free Design Board Member, to represent Municipal Building Officials.

The code hearings for the development of the 2012 International Codes will begin in the fall of this year.

9. **PUBLIC COMMENT**

None

10. **NEXT MEETING**

March 13, 2009

11. **ADJOURNMENT**

The meeting adjourned at approximately 10:05 a.m.

(McGladdery **MOTION**, Holt **SUPPORT**) **MOTION CARRIED**

Approved: _____
Roger Donaldson, Chairperson

Date: _____



RECEIVED

DEC 26 2008

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

December 12, 2008

Barrier Free Design Board
Bureau of Construction Codes
P.O. Box 30254
Lansing, MI 48909

RE: Project No. 58351, Exception No. 2006-995

Dear Sirs:

On January 19, 2007, the Williamston Theatre was granted a two-year exception to build two barrier free restrooms in our facility to accommodate both male and female patrons. We expected to be able to complete construction on the project by our appointed deadline of January 19, 2009. We applied for and received a Capital Improvement grant from the Michigan Council for Arts and Cultural Affairs (MCACA) in support of this project. The MCACA grant requires a 1:1 match. Our main prospect for this match unexpectedly turned down our application. All funding for the project is now in question and in light of the current economic climate, we must proceed with caution and delay the construction until we can secure additional funding.

Therefore, we are asking for a one-year extension of the exception granted by the Barrier Free Board. We hope to be able to raise the required funds by September of 2009, and build the required restrooms before the start of our next season. We are continuing to serve our patrons with mobility-challenges and have one unisex barrier free restroom at this time. Our facility has two additional non-barrier free restrooms.

Thank you for your consideration of our request.

Sincerely,


John Lepard
Executive Director

cc: David Hess, City of Williamston

**MICHIGAN DEPARTMENT OF LABOR & ECONOMIC GROWTH
BUREAU OF CONSTRUCTION CODES
BARRIER FREE DESIGN BOARD
2501 Woodlake Circle
Okemos, MI 48864**

**Project No. 58351
Exception No. 2006-995
Use Group: A1A**

**122 S Putnam Street
Williamston, Michigan 48895
Ingham County**

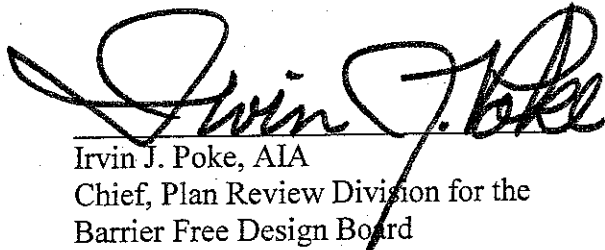
ORDER OF THE MICHIGAN BARRIER FREE DESIGN BOARD

On January 19, 2007 the Barrier Free Design Board reviewed the Report of the Administrative Law Judge dated November 3, 2006. All supplemental materials received before the Board meeting were reviewed. Copies were sent to all parties. This order is issued pursuant to Section 5(6)(a) of 1966 P.A. 1, as amended; 1972 P.A. 230, as amended; and Section 81 of 1969 of P.A. 306, as amended, and Rule R 125.1016.

FINDINGS AND CONCLUSIONS: The Board adopted the report of the Administrative Law Judge. The Board concurs with the Conclusions of Law and Recommendation. The required plan of compliance has been received and accepted.

THEREFORE, it is the order of the Board to grant an exception from the requirements of the 2003 MBC, Section 1109.2 for a period of 2 years. The exception granted by this order will expire on January 19, 2009. The building must be in full compliance no later than the expiration date of this order relief.

The Board can only grant or deny exceptions to Michigan's barrier free design requirements. The Board has no authority over the federal standards contained in the Americans with Disabilities Act of 1990, 42 U.S.C. 12204.



Irvin J. Poke, AIA
Chief, Plan Review Division for the
Barrier Free Design Board

January 30, 2007

**THE ORDER SHALL BE DISPLAYED IN A CONSPICUOUS LOCATION FOR
PUBLIC EXAMINATION AS A CONDITION OF THE EXCEPTION.**

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

In the matter of

Docket No. 2008-1278

Lapeer Community Church
80 N. Lake Pleasant Road
Attica, MI
Applicant

Agency No. 82484

Agency: Bureau of Construction (

Case Type: Barrier Free Design
Exception Request

5. EXCEPTION APPLICATIONS
01. 82484

Issued and entered
this 30 day of January, 2009
by Lauren G. Van Steel
Administrative Law Judge

FEB 03 2009

REPORT OF THE ADMINISTRATIVE LAW JUDGE

PROCEDURAL FINDINGS

This is a proceeding held pursuant to the authority granted in Section 5 of 1966 PA 1, as amended, MCL 125.1351 *et seq*; 1972 PA 230, as amended, MCL 125.1501 *et seq*; and 1969 PA 306, as amended, MCL 24.201 *et seq*.

The purpose of this review is to examine an application for exception from requirements contained in the Barrier Free Design Rules of the State Construction Code. A hearing was held on January 26, 2009, in Lansing, Michigan. Present were Richard Schwab and Glenne Bannon representing the Applicant, and Usha Menon representing the Plan Review Division. Applicant's representatives were sworn in and testified as witnesses. The following exhibits, offered by the Applicant, were admitted into evidence:

1. Applicant's Exhibit No. 1 is copy of a portion of the building blueprint.
2. Applicant's Exhibit No. 2 is a quote for a wheelchair lift from Acton Rental and Sales, dated January 22, 2009.

The record was closed at the conclusion of the hearing.

ISSUE

Should the Board grant the Applicant a five-year time exception from Section 1108.2.8 of the 2003 Michigan Building Code (MBC)? (Note: the Applicant changed its exception request from three years to five years at the hearing.)

FINDINGS OF FACT

The Applicant, Lapeer Community Church, has a church congregation of about 200 members, with two full-time pastors and two part-time employees. In August 2007, the Applicant purchased the building at issue, located at 80 N. Lake Pleasant Road in Attica, Michigan. At the time of purchase, the building was a closed elementary school. The total approximate size of the building is 21,000 square feet. The front area of the building was built in 1930, and is comprised of approximately 2,900 square feet.

The Applicant renovated the front of the building and converted it to an auditorium, which is used by the Applicant primarily on Sunday mornings for worship services. As part of the renovation, the Applicant took down masonry walls and constructed a stage that is roughly 14 by 34 feet in size and 30 inches higher than the auditorium floor level. The height of the stage was chosen to ensure the best visibility for the congregation seated on chairs in the auditorium. Six persons, including speakers and musicians, are typically on stage during the services, but the speakers and musicians can also address the congregation at the regular floor level. The congregation's chairs are moveable, such that speakers and musicians at floor level can be accommodated.

At the time of the renovation, the Applicant was not informed by the architect or local building authority that barrier free access to the stage was required. When the Applicant later learned of the access requirement, it understood that an ADA-compliant lift,

costing about \$4,000.00, would be sufficient. (It was determined that an extended ramp would not be feasible for the available space.) The Applicant later learned from the Bureau of Construction Codes, however, that a different kind of wheelchair lift was required. A short permanent ramp is also needed. The first bid for the required lift and ramp was approximately \$22,000.00. Two subsequent bids from local contractors have been for \$13,500.00 and \$14,772.00. (See, Applicant's Exhibit No. 2).

The Applicant has recently closed on a mortgage loan of \$170,000.00 for the building and current renovations. It does not now have the funds to pay for the required lift. It expects to raise the required funds as soon as possible through contributions from the congregation. All current building funds have been exhausted. Contributions from church members have decreased because of the downturn in the economy and layoffs or unemployment. The Applicant is not in a position to obtain any other loans at this time. If the Applicant is required to immediately raise the funds for the lift and ramp, it may have to lay off the church's youth pastor or other staff, which would negatively affect its overall purpose.

While the Applicant believes that it may well be able to raise the necessary funds for the lift and ramp within three years, it is requesting that an exception be allowed for up to five years, given the uncertain state of the economy.

CONCLUSIONS OF LAW

Act 1 of the Public Acts of 1966, as amended, states that the barrier free design requirements were created "to provide for the accessibility and utilization by physically limited persons of public facilities and facilities used by the public." The Barrier Free Design Board is authorized by the Act to grant or deny requests for exceptions to any

or all of the barrier free design requirements for a stated time period and upon stated conditions, and require alternatives when exceptions are granted.

An exception request is granted only when the Applicant demonstrates compelling need. The Applicant has the ultimate burden of proving that an exception should be granted. An exception is a special license to deviate from rules that have uniform applicability to all facilities. Compelling need may be present if the literal application of a specific barrier free design requirement would result in exceptional, practical difficulty to the Applicant or where compliance would not be economically, technologically, structurally, or administratively feasible.

Section 1108.2.8 of the 2003 MBC requires an accessible route:

1108.2.8. Performance areas. An accessible route shall directly connect the performance area to the assembly seating area where a circulation path directly connects a performance area to an assembly seating area. An accessible route shall be provided from performance areas to ancillary areas or facilities used by performers.

The Applicant has presented compelling reasons to justify a five-year time exception, based on the total project cost and the limited use of the area proposed to be inaccessible. Barrier Free Design Board Rule R 125.1014(2).

First the estimated cost to install the required wheelchair lift and permanent ramp is quite significant, given the overall cost of the building and other renovations. The Applicant has shown compelling reason why it cannot immediately raise the funds to install the lift and ramp. Given the current state of the economy, the Applicant appears to have realistically estimated the time required to raise the necessary funds from its congregation.

Further, there is currently limited use by the Applicant and its employees of the inaccessible stage area in the auditorium. It is used primarily for Sunday worship services, to address congregants. Speakers and musicians can still address the congregants while on the auditorium floor level. The auditorium chairs are moveable to accommodate speakers or musicians at floor level. Until the required wheelchair lift and ramp are installed, the Applicant can make accommodation for such speakers or musicians at the floor level.

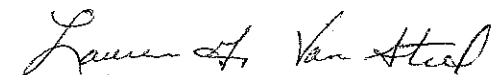
RECOMMENDED DECISION

I recommend the Board grant the Applicant a five-year time exception from Section 1108.2.8 of the Michigan Building Code 2003.

As a condition to granting this time exception, the owner shall submit, within 60 days from the Board's Final Order issued after review of this recommendation, a plan/proposal detailing how compliance will be achieved within the time exception period. This plan/proposal must show or state that it is technically and structurally feasible to meet the applicable Barrier Free Design Rules.

As a condition to granting this exception, the Board's Final Order, issued after review of this recommendation, shall be displayed in a conspicuous public location of the building.

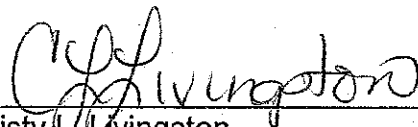
A party may file comments, clarifications or objections to this Report, including written arguments, with the Bureau of Construction Codes, P.O. Box 30254, Lansing, Michigan 48909, Attention: Todd Cordill.



Lauren G. Van Steel
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 30 day of January, 2009.



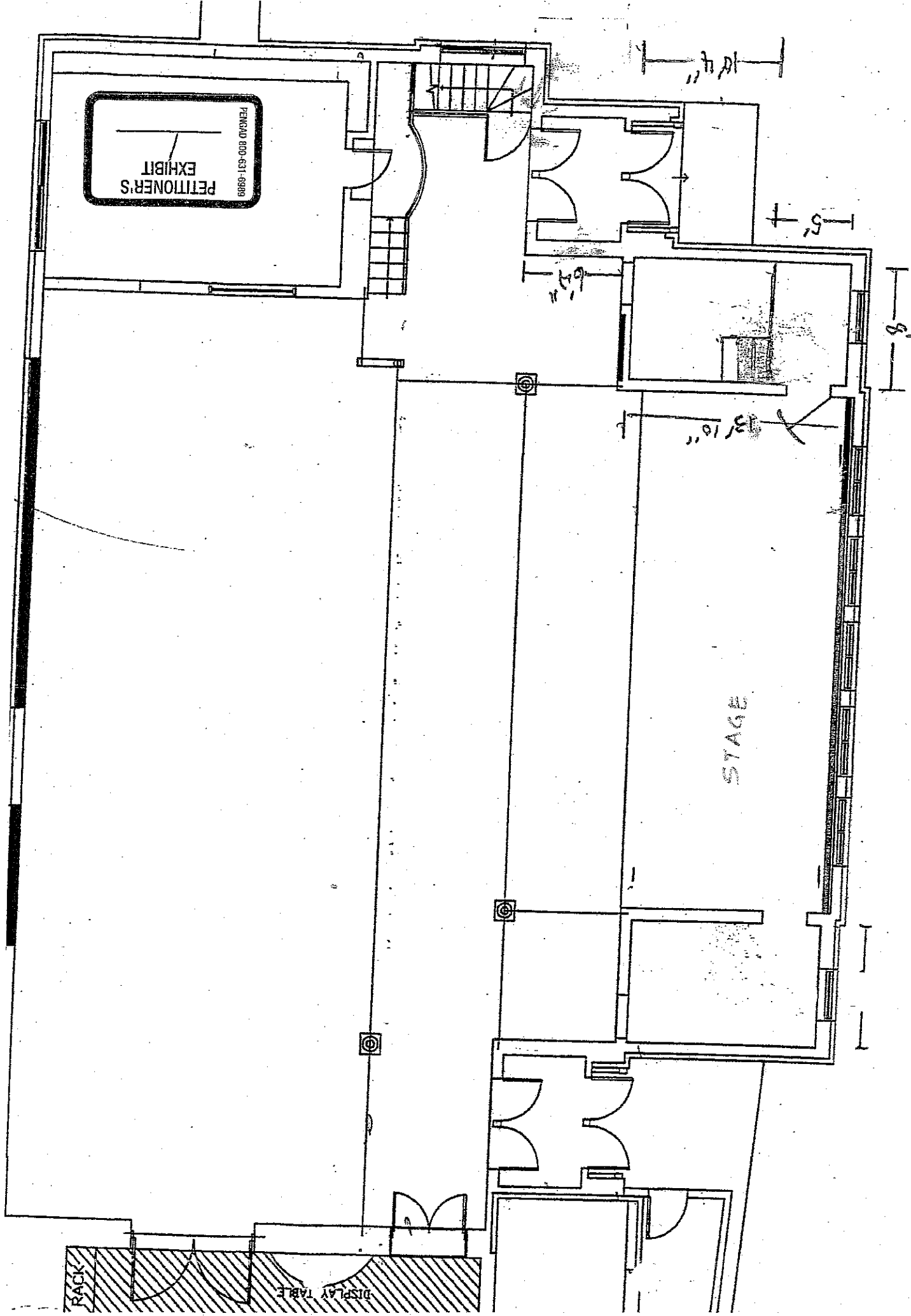
Christy L. Livingston
State Office of Administrative Hearings and Rules

John Sharp
Construction Code Authority
1075 Suncrest Drive
Lapeer, MI 48446

Richard Schwab
Lapeer Community Church
80 N. Lake Pleasant Road
Attica, MI 48412

Todd Cordill
Bureau of Construction Codes
Plan Review Division
2501 Woodlake Circle
Okemos, MI 48864

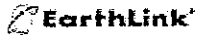
Usha Menon
Bureau of Construction Codes
Plan Review Division
2501 Woodlake Circle
P.O. Box 30254
Lansing, MI 48909



PENGAD 800-631-6989
PETITIONER'S
EXHIBIT

STAGE

RACK
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 - INBOX (27) new
 - Drafts (0)
 - Sent (14)
 - Trash (10) [Empty]
 - Saved Messages (3) new

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- Web Mail Help
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Message

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Reply Reply All Forward... Print Delete Spam Move to... More Actions...

From: actonsalesco1234@aol.com [Add to Address Book]

To: glenwood@earthlink.net

Subject: WHEELCHAIR LIFT WITH 30" RISE

Date: Jan 22, 2009 8:47 PM

LAPEER COMMUNITY CHURCH
80 NORTH LAKE PLEASANT ROAD
ATTICA, MICHIGAN 48412

ATTENTION: GLENNE BANNON

GLENN, BELOW IS OUR PRICE FOR THE SALES AND INSTALLATION TO CODE OF ONE ACCESS INDUSTRIES, MODEL EZE ENCLOSURE MODEL WHEELCHAIR LIFT WITH THE FOLLOWING:

- METAL SIDE PANELS
- 42" UPPER GATE WITH INTERLOCK
- 80" LOWER DOOR WITH INTERLOCK
- PERMANENT RAMP AT LOWER LEVEL
- ALL CONTROLS TO BE A "NO KEY" OPERATED

ALL STATE PERMITS, MATERIALS AND LABOR FOR THE INSTALLATION.

TOTAL COST: \$13,500.00

NOT INCLUDED IN THE PRICE IS THE ELECTRICAL TO THE LIFT WITH AN APPROVED DISCONNECT.

IF ACCEPTED A DEPOSIT OF 25% IN ADVANCE (\$3,375.00); 50% IS DUE WHEN THE LIFT IS DELIVERED TO THE CHURCH (\$6,750.00), THE BALANCE IS DUE ON COMPLETION OF THE INSTALLATION AND STATE INSPECTION.

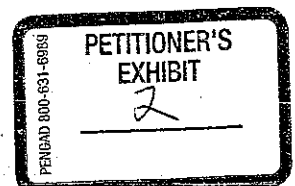
THE ABOVE PRICE IS GOOD FOR SIXTY DAYS FROM JANUARY 22, 2009. IF YOU HAVE ANY QUESTIONS PLEASE CALL ME.

SINCERELY,
LARRY L. ARONOFF
ACTON RENTAL & SALES

A Good Credit Score is 700 or Above. See yours in just 2 easy steps!

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RECEIVED

SEP 15 2008

Application for Barrier Free Design Rule Exception
Michigan Department of Labor & Economic Growth
Bureau of Construction Codes / Plan Review
P.O. Box 30255, Lansing, MI 4890
517-241-9328
www.michigan.gov/bcc

133

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

82 484

Application Fee: \$300.00

Authority: 1966 PA 1 Completion: Mandatory Penalty: Exception will not be granted	The Department of Labor and Economic Growth will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability, or political beliefs. If you need help with reading, writing, hearing, etc., under the Americans with Disabilities Act, you may make your needs known to this agency.
---	--

The Barrier Free Design Board has no authority over the federal standards contained in the Americans with Disabilities Act of 1990, 42 U.S.C. 12204.

Tran Info: 133 14288823-1 09/12/08

Chk#: 2831 Amt: \$300.00

ID: RICHARD SCHWAB

Note: The applicant is responsible for all fees applicable to this application.

FACILITY INFORMATION			
FACILITY NAME <u>LAPEER Community Church</u>		STREET / SITE ADDRESS <u>80 N. LAKE PLEASANT RD.</u>	
NAME OF CITY, VILLAGE OR TOWNSHIP IN WHICH FACILITY IS LOCATED <input type="checkbox"/> City <input checked="" type="checkbox"/> Village <input type="checkbox"/> Township Of: <u>Attica</u>		COUNTY <u>LAPEER</u>	
Estimated Project Cost \$ <u>400,000.00</u>		Estimated Cost of Compliance \$ <u>25,000.00</u>	
BUILDING PERMIT (To be completed by the administrative authority responsible for issuing the building permit for this project)			
<input type="checkbox"/> New Building <input checked="" type="checkbox"/> Alteration <input checked="" type="checkbox"/> Change of Use		Building Permit / File Number <u>07-00631</u>	
Is a Temporary Exception Requested? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes		PERIOD OF TIME REQUESTED? <u>3 YEARS</u>	USE GROUP <u>A-3</u>
		CONSTRUCTION TYPE <u>3B</u>	
Project Does Not Comply With Barrier Free Design Requirements As Follows: <u>NO ACCESSIBLE ROUTE CONNECTING MAIN FLOOR LEVEL TO THE RAISED STAGE.</u> Michigan Building Code Section(s) <u>1104.4</u>			
Reason for Non-Compliance <u>COST IS 4 TO 5 TIMES ESTIMATED COST DUE TO STATE REQUIREMENTS FOR A LIFT. EXISTING STRUCTURE/SPACE MAKE IT EXTRAORDINARILY DIFFICULT TO BUILD A RAMP. WE NEED TIME TO SEEK SOLUTIONS AND RAISE MONEY.</u>			
NAME <u>JOHN SHARP</u>		ENFORCING AGENCY CONSTRUCTION CODE AUTHORITY	
ADDRESS <u>1075 S.W. SUNCREST DRIVE</u>		CITY <u>LAPEER</u>	TELEPHONE NUMBER (Include Area Code) <u>(810) 667-0420</u>
		ZIP CODE <u>48446</u>	FAX NUMBER (Include Area Code) <u>(810) 667-29582</u>
BUILDING OFFICIAL SIGNATURE (Must be an original signature) <u>[Signature]</u>			
PROJECT ARCHITECT / ENGINEER (When professional services are required by code or law)			
NAME <u>R. JAMES WILSON</u>		MICHIGAN LICENSE NUMBER <u>10519</u>	FIRM NAME <u>WILSON & ASSOCIATES ARCH.</u>
ADDRESS <u>23 N. WASHINGTON</u>	CITY <u>OXFORD</u>	STATE <u>MICH</u>	TELEPHONE NUMBER (Include Area Code) <u>1-248-628-1535</u>
ZIP CODE <u>48371</u>			
APPLICANT (Note: All correspondence will be sent to this address)			
NAME OF APPLICANT/APPLICANT'S REPRESENTATIVE <u>Richard Schwab</u>		COMPANY NAME <u>LAPEER Community Church</u>	SOCIAL SECURITY NUMBER* OR FEIN (REQUIRED) <u>[REDACTED]</u>
ADDRESS <u>80 N. LAKE PLEASANT RD.</u>	CITY <u>Attica</u>	STATE <u>MI</u>	TELEPHONE NUMBER (Include Area Code) <u>510-724-8800</u>
		ZIP CODE <u>48412</u>	FAX NUMBER (Include Area Code) <u>N/A</u>
I certify the proposed work is authorized by the owner, of record. I agree to conform to all applicable laws of the State of Michigan and all information submitted is accurate to the best of my knowledge.			
APPLICANT SIGNATURE (Must be an original signature) <u>[Signature]</u>		DATE <u>9-10-08</u>	

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

In the matter of

Docket No. 2008-1543

Wyzgowski Building
600 Columbus Avenue
Bay City, MI,
Applicant

Agency No. 83062

Agency: Bureau of Construction
Codes

Case Type: Barrier Free Design
Exception Request

5. EXCEPTION APPLICATIONS
02. 83062

Issued and entered
this 20th day of January 2009
by J. Andre Friedlis
Administrative Law Judge

REPORT OF THE ADMINISTRATIVE LAW JUDGE

PROCEDURAL FINDINGS

This is a proceeding held pursuant to the authority granted in Section 5 of 1966 PA 1, as amended, MCL 125.1351 *et seq*; 1972 PA 230, as amended MCL 125.1501 *et seq*; and 1969 PA 306, as amended, MCL 24.101 *et seq*.

The purpose of this review is to examine an application for exception from requirements contained in the Barrier Free Design Rules of the State Construction Code. A hearing was held on January 15, 2009, at the State Office of Administrative Hearings and Rules, Ottawa Building, 611 West Ottawa, 2nd Floor, Lansing, Michigan. Present were Arthur and Michelle Wyzgowski, building owners, representing the Applicant, Edward Moszyk, Building Official for Bay City Michigan, and Usha Menon, representing the Plan Review Division.

ISSUE

Should an exception be granted from Section 1105.1 of the 2006 Michigan Building Code (MBC)?

FINDINGS OF FACT

The building at issue was built approximately 110 years ago. The adjacent two story home was built at the same time. Neither structure is in a historic district. The Applicant purchased these structures in 2004 for \$65,000.

The building at issue is the rectangular structure at the corner shown in the photographs. This building has 1200 square feet and is zoned for commercial office use. The Applicant wants to be able to rent it for possible office or retail use. In the past the building was used as an insurance office.

The front door is accessed via a 4 to 5 inch step. The city will not approve placing a ramp on the public sidewalk. Before the Applicant's purchase of the building, the sidewalk was flush with the front door opening. However, prior to the building purchase, the city substantially modified the street, curb, lighting, and sidewalk which resulted in the step now present at the front door. Moving the front entrance inside the building to provide space for a ramp would take needed inside space.

As noted on the photographs provided by the Applicant, the rear entrance has a 6 inch step to the rear entrance. A ramp to provide access would cost approximately \$3000.

The Applicant plans to spend approximately \$45,000 to pave the parking lot, add the ramp to the rear entrance, install a unisex barrier free bathroom, and provide a new ceiling, windows, and front and rear doors. The Applicant has already replaced brick work on the front side, updated the electrical, and gutted the building.

CONCLUSIONS OF LAW

Act 1 of the Public Acts of 1966, as amended, states that the barrier free design requirements were created "to provide for the accessibility and utilization by physically limited persons of public facilities and facilities used by the public." The Barrier Free Design Board is authorized by the Act to grant or deny requests for exceptions to any or all of the barrier free design requirements for a stated time period and upon stated conditions, and require alternatives when exceptions are granted.

An exception request is granted only when the Applicant demonstrates compelling need. The Applicant has the ultimate burden of proving that an exception should be granted. An exception is a special license to deviate from rules that have uniform applicability to all facilities. Compelling need may be present if the literal application of a specific barrier free design requirement would result in exceptional, practical difficulty to the Applicant or where compliance would not be economically, technologically, structurally, or administratively feasible.

Section 1105.1 of the 2006 MBC provides:

1105.1 Public entrances. In addition to accessible entrances required by Section 1105.1.1 through 1105.1.6 at least 60 percent of all public entrances shall be accessible.

(Exceptions omitted)

Compelling need based on impossibility of compliance due to site restrictions at the front entrance has been presented. The Applicant cannot encroach on the public sidewalk to provide building access. Adding a ramp to the inside of the building would reduce rental space.

The Applicant proposes adding a ramp to the rear entrance in order to provide barrier free access. As shown on the photographs submitted, there is space to add

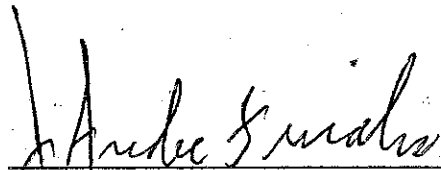
this ramp on the Applicant's property. The Applicant will also add a barrier free complaint unisex bathroom.

RECOMMENDED DECISION

I recommend the Board grant the Applicant an exception from Section 1105.1 of the 2006 Michigan Building Code.

As a condition to granting these exceptions, the Board's Final Order, issued after review of this recommendation, shall be displayed in a conspicuous public location of the building.

A party may file comments, clarifications or objections to this Report, including written arguments, with the Bureau of Construction Codes, P.O. Box 30254, Lansing, Michigan 48909, Attention: Todd Cordill.



J. Andre Friedlis
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 20th day of January, 2009.



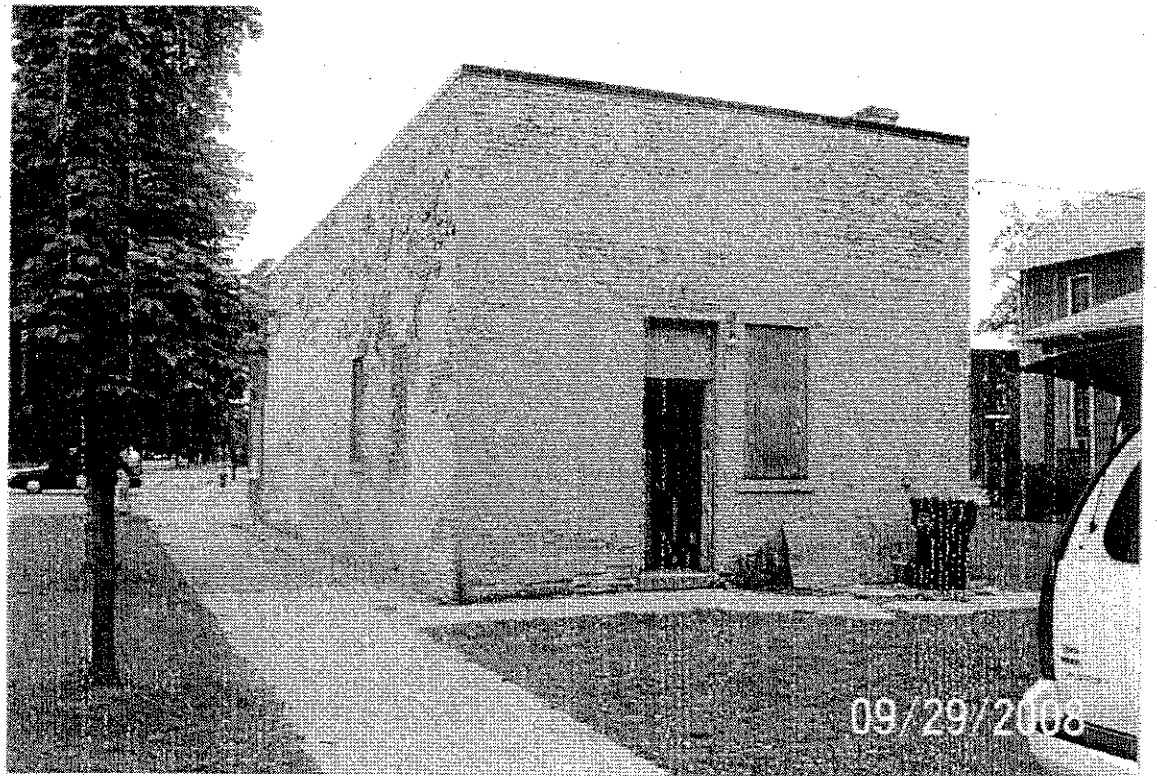
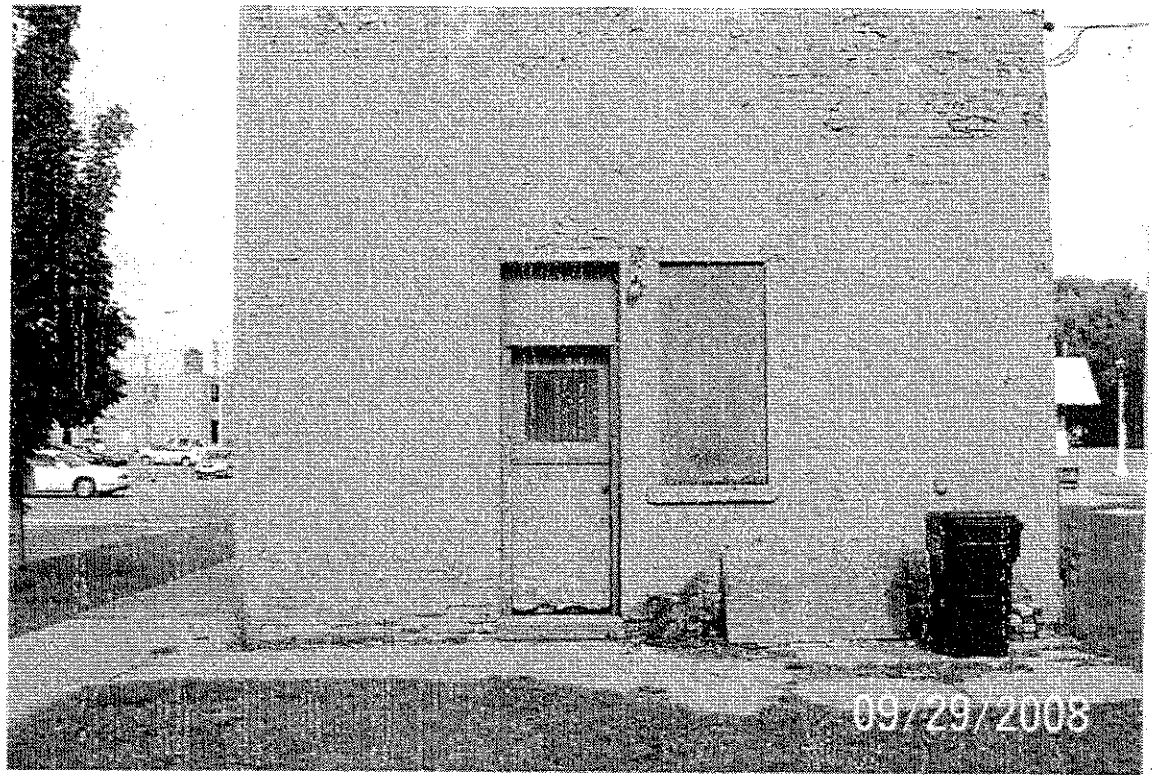
Lenore Baker
State Office of Administrative Hearings and Rules

Arthur Wyzgowski
Wyzgowski Building
510 S. Van Buren
Bay City, MI 48708

Edward Moszak
Bay City Code Enforcement
301 Washington Avenue
Bay City, MI 48708

Todd Cordill
Bureau of Construction Codes
Plan Review Division
2501 Woodlake Circle
Okemos, MI 48864





600 COLUMBUS AVE. BAY CITY, MI

SCALE $\frac{1}{4}" = 1'7"$

BACK BUILDING

38"

7'

6" STEP

SIDEWALK
8' wide

PROPOSED RAMP TO BE IN COMPLIANCE WITH BARRIER FREE DESIGN RULES
(1" OR LESS PER FOOT)

RAILINGS TO BE INSTALLED PER CODE

PLAN REVIEW
COPY

83 062

Shelf No. File

RECEIVED

OCT 10 2008

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

Application for Barrier Free Design Rule Exception
Michigan Department of Labor & Economic Growth
Bureau of Construction Codes / Plan Review Division
P.O. Box 30255, Lansing, MI 48909
517-241-9328
www.michigan.gov/bcc

133

83 062

OCT 21 2008

Application Fee: \$300.00

Authority: 1966 PA 1
Completion: Mandatory
Penalty: Exception will not be granted

The Department of Labor and Economic Growth will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability, or political beliefs. If you need help with reading, writing, hearing, etc., under the Americans with Disabilities Act, you may make your needs known to this agency.

The Barrier Free Design Board has no authority over the federal standards contained in the Americans with Disabilities Act of 1990, 42 U.S.C. 12204.

Note: The applicant is responsible for all fees applicable to this application.

Tran Info: 15 14341126-1 10/09/08
Chk#: 101308800225 Amt: \$300.00
TO: ARTWIR WYZGOWSKI

FACILITY INFORMATION			
FACILITY NAME BUILDING WYZGOWSKI BUILDING		STREET / SITE ADDRESS 600 COLUMBUS AVE.	
NAME OF CITY, VILLAGE OR TOWNSHIP IN WHICH FACILITY IS LOCATED <input checked="" type="checkbox"/> City <input type="checkbox"/> Village <input type="checkbox"/> Township Of: BAY CITY		COUNTY BAY	
Estimated Project Cost \$ 30,000.00		Estimated Cost of Compliance \$ 3000.00	
BUILDING PERMIT (To be completed by the administrative authority responsible for issuing the building permit for this project)			
<input type="checkbox"/> New Building <input checked="" type="checkbox"/> Alteration <input checked="" type="checkbox"/> Change of Use		Building Permit / File Number AB08-0581	
Is a Temporary Exception Requested? <input type="checkbox"/> No <input type="checkbox"/> Yes		PERIOD OF TIME REQUESTED?	USE GROUP
CONSTRUCTION TYPE			
Project Does Not Comply With Barrier Free Design Requirements As Follows: Michigan Building Code Section(s) 3409.6 Reason for Non-Compliance: DUE TO A CHANGE IN ELEVATION AT THE CITY SIDEWALK AND CLOSE PROXIMITY TO THE BUILDING A STEP IS NECESSARY. AN ALTERNATE BUT ACCESSIBLE ENTRANCE IS PROPOSED AT THE REAR OF THE BUILDING. THIS PROPOSAL IS AN ACCEPTABLE ALTERNATIVE CONSIDERING THE CIRCUMSTANCES. TQM.			
NAME EDWARD J MOSZYK		ENFORCING AGENCY CITY OF BAY CITY	TELEPHONE NUMBER (Include Area Code) 989-894-8162
ADDRESS 301 WASHINGTON AVE		CITY BAY CITY	ZIP CODE 48708
BUILDING OFFICIAL SIGNATURE (Must be an original signature) <i>Edward J Moszyk</i>		FAX NUMBER (Include Area Code) 989-894-8224	
PROJECT ARCHITECT / ENGINEER (When professional services are required by code or law)			
NAME		MICHIGAN LICENSE NUMBER	FIRM NAME
ADDRESS	CITY	STATE	ZIP CODE
TELEPHONE NUMBER (Include Area Code)			
APPLICANT (Note: All correspondence will be sent to this address)			
NAME OF APPLICANT/APPLICANT'S REPRESENTATIVE ARTHUR WYZGOWSKI		COMPANY NAME	SOCIAL SECURITY NUMBER OR FEIN (REQUIRED)
ADDRESS 510 S. VAN BUREN	CITY BAY CITY	STATE MI	ZIP CODE 48708
TELEPHONE NUMBER (Include Area Code) 989-798-8406		FAX NUMBER (Include Area Code)	
I certify the proposed work is authorized by the owner of record. I agree to conform to all applicable laws of the State of Michigan and all information submitted is accurate to the best of my knowledge.			
APPLICANT SIGNATURE (Must be an original signature) <i>Arthur Wyzgowski</i>			DATE SEPT. 30, 2008